

28 JUN 1971

Judge Seeks Viet Papers

By BARRY KALB

Star Staff Writer

The battle between press and government over publication of secret Vietnam war documents has taken a new turn, with a federal judge ordering for the first time the impounding of the documents.

District Court Judge Anthony Julian in Boston yesterday enjoined the Boston Globe from printing more of a series based on the documents, and ordered the paper to turn the materials over to the court.

Although two other papers have been restrained by federal courts from continuing publication of similar series based on Pentagon documents describing the growth of U.S. involvement in the Vietnam war, the judges in those cases have not ordered impoundment. Executives of the other papers did, however, provide the court and the government with a list of the documents they possess.

In other action in the controversy over the so-called "Vietnam archives":

- The New York Times and the Washington Post are awaiting rulings by separate appeals courts on whether they can resume their publication of stories based on the documents.

- The Chicago Sun-Times published an article today it said was based on secret State Department documents dealing with the origins of the war. It described 1963 memos by a high State Department official urging replacement of the Diem brothers in South Vietnam.

- The White House said President Nixon in January ordered a review of classification procedures, an order that it said Defense Secretary Laird was referring to yesterday when he announced that the declassification of the Pentagon study was being speeded up.

- Sen. J. William Fulbright, chairman of the Senate Foreign Relations Committee, said the committee has possessed parts of the study for "some time." He said the committee would decide today whether to conduct its own investigation of U.S. involvement in Indochina.

The case of the Globe, which began its series yesterday, has now followed the pattern of those of the Times and Post, with the exception of the impoundment order.

Judge Julian ruled:

"The defendant newspaper, its officers, agents and employees" must "deliver to this court forthwith all the aforementioned documents and any copies, excerpts, duplications or other tangible evidence of such documents to be held by this court pending further order of this court."

"It is further ordered that the materials so delivered shall be impounded until further order of this court," Julian's order said.

Globe executives were discussing the order today.

The government originally asked that both the Times, which began its series on June 13, and the Post, which began publication five days later, be ordered to turn over any documents in their possession relating to the study.

But U.S. District Court Judges Murray I. Gurfein in New York and Gerhard A. Gesell here refused to enter such an order. Both the Times and Post, however, have given the government lists of the documents in their possession.

Based on Study

All three papers' series are based on parts of a 47-volume study, commissioned by then-Secretary of Defense Robert S. McNamara in 1967. The government has classified the study "top secret."

The nine-man U.S. Court of Appeals for the District of Columbia and the eight-man 2nd Circuit Court of Appeals in New York began hearing the cases of the Times and the Post simultaneously about 2 p.m. yesterday, after Gurfein and Gesell had independently refused to issue preliminary injunctions against continued publication.

Both courts continued temporary injunctions against publication by either paper pending their respective decisions. It was considered possible that the decisions would be reached today.

It has been conceded by both sides that whoever loses will appeal to the Supreme Court, and it is considered virtually certain that the high court will hear the case. A possible exception to this might be if both circuits rule in favor of the newspapers by heavy majorities.

Arguments Restated

The arguments in both courts on behalf of the government and the newspapers were basically repeats of what has been heard since the government first moved against the Times on June 15.

The government contends that publication of material in the study will be prejudicial to the national interest, compromising U.S. diplomatic relations and jeopardizing national security. The government also charges that the documents in the hands of both newspapers have been "stolen."

The newspapers contend, after full hearings before Gurfein and Gesell, that nothing in the documents will endanger national interests. Both concede that extreme circumstances might justify prior restraint of newspaper articles, but both argue that such restraint is not justified in this case and that First Amendment guarantees of freedom of the press should therefore pre-